IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RODNEY WOIDTKE,

Plaintiff,

vs.

THE COUNTY OF ST. CLAIR, ILLINOIS,
THE PUBLIC DEFENDER'S OFFICE OF
ST. CLAIR COUNTY, ILLINOIS,
BRIAN K. TRENTMAN, and
VINCENT J. LOPINOT,

Defendants. **No. 02-CV-0225-DRH**

MEMORANDUM AND ORDER

Herndon, District Judge:

I. Introduction

On March 29, 2002, Woidtke filed a three-count complaint against Defendants St. Clair County, Public Defender's Office of St. Clair County, Brian Trentman, and Vincent Lopinot (Doc. 1). In Count I, Woidtke alleges that Defendants were negligent in their representation of him during a criminal trial in 1989, which resulted in his conviction. Woidtke claims that Defendants labored under a conflict of interest which resulted in ineffective assistance of counsel. In Count II requesting punitive damages, Woidtke alleges that Defendants' acts were willful and wanton. In Count III, Woidtke alleges that Defendant St. Clair County is liable for damages under **745 ILCS 10/9-102**.

Woidtke was charged in state court with murdering Audrey Cardenas.

Defendant Trentman represented Woidtke in this criminal proceeding, and Defendant Lopinot was Defendant Trentman's supervising attorney. Prior to and during trial, Defendant Trentman also represented Dale Anderson, who was later deemed a suspect in the Cardenas murder. Woidtke was convicted and sentenced to forty-five years imprisonment.

Defendant Trentman undertook Woidtke's representation during his post-conviction proceedings. Defendant Trentman withdrew from Woidtke's representation in January of 1998. After Woidtke obtained new counsel, the state appellate court vacated Woidtke's conviction and remanded the case for a new trial. On remand, Woidtke was found not guilty. Woidtke had already been incarcerated for twelve years.

On March 29, 2002, Woidtke filed a complaint in this Court alleging legal malpractice (Doc. 1).[1] On July 23, 2002, Defendant Lopinot filed a motion to dismiss (Doc. 12). On July 29, 2002, Defendants St. Clair County and Public Defender's Office of St. Clair County filed a motion to dismiss (Doc. 14). Also on July 29, Defendant Trentman filed a motion to dismiss (Doc. 16). Plaintiff responded to these motions in a consolidated memorandum (Doc. 26). For the reasons stated below, the Court grants all Defendants' motions to dismiss.

II. Analysis

A. Motion to Dismiss

When ruling on a motion to dismiss for failure to state a claim, the

[1]Diversity jurisdiction is asserted.

district court assumes as true all facts well-pled plus the reasonable inferences therefrom and construes them in the light most favorable to the plaintiff. ***Fries v. Helsper*, 146 F.3d 452, 457 (7th Cir. 1998)(citing *Wiemerslage Through Wiemerslage v. Maine Township High Sch. Dist. 207*, 29 F.3d 1149, 1151 (7th Cir. 1994))**. The question is whether, under those assumptions, the plaintiff would have a right to legal relief. ***Id***. This standard also has been articulated:

> [U]nder "simplified notice pleading," . . . the allegations of the complaint should be liberally construed, and the "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

***Lewis v. Local Union No. 100 of Laborers' Int'l Union*, 750 F.2d 1368, 1373 (7th Cir. 1984)(quoting *Conley v. Gibson*, 355 U.S. 41, 46-47 (1957)). Accord *Fries*, 146 F.3d at 457; *Vickery v. Jones*, 100 F.3d 1334, 1341 (7th Cir. 1996)**.

The Seventh Circuit has reiterated the liberal standard governing notice pleading:

> It is sufficient if the complaint adequately notifies the defendants of the nature of the cause of action . . . . As the Supreme Court has recently reminded us, the Federal Rules of Civil Procedure do not permit us to demand a greater level of specificity except in those instances in which the Rules specifically provide for more detailed elaboration. See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993).

***Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1057 (7th Cir. 1998); *See also Kaplan v. Shure Bros., Inc.*, 153 F.3d 413, 419**

(7th Cir. 1998). In fact, the Seventh Circuit has instructed that a plaintiff's claim *must* survive a 12(b)(6) dismissal motion if relief could be granted under *any* set of facts that could be proved consistent with the allegations. ***Hi-Lite Prods. Co. v. Am. Home Prods. Corp.*, 11 F.3d 1402, 1409 (7th Cir. 1993)**.

B. Defendants Lopinot, Trentman, and St. Clair County

Defendants Lopinot, Trentman, and St. Clair County contend that the statute of limitations provided in **745 ILCS 10/8-101** bars Woidtke's complaint. The statute provides that actions against "a local entity or any of its employees" must be commenced "within one year from the date that the injury was received or the cause of action accrued." **745 ILCS 10/8-101**.[2] In Illinois, a legal malpractice action accrues when the client discovers, or should have discovered, the facts establishing the elements of the cause of action. ***Griffin v. Goldenhersh*, 752 N.E.2d 1232, 1238 (Ill. App. Ct. 2001); *Sorenson v. Law Offices of Theodore Poehlmann*, 764 N.E.2d 1227, 1230 (Ill. App. Ct. 2002)**.

To assert a legal malpractice claim against a criminal defense attorney, a plaintiff must establish: (1) an attorney-client relationship; (2) a duty arising out of that relationship; (3) a breach of that duty; (4) causation; (5) actual damages; and (6) plaintiff's innocence of the crime for which the defendant represented him. ***Griffin*, 752 N.E.2d at 1238**. However, a plaintiff is collaterally estopped from arguing facts

[2]The parties do not dispute that Defendant St. Clair County is a local entity. Likewise, the parties do not dispute that Defendants Trentman and Lopinot were employed by St. Clair County, a local entity (***See*** Doc. 1, ¶ 2, 4).

established and issues decided in a prior criminal proceeding. ***Kramer v. Dirksen*, 695 N.E.2d 1288, 1290 (Ill. App. Ct. 1998)**. "Thus, before a plaintiff's conviction is overturned, a plaintiff is collaterally estopped from arguing his innocence, leaving him with no cause of action." ***Griffin*, 752 N.E.2d at 1239**.

In Illinois, a legal malpractice cause of action against a criminal defense attorney "accrues when the reviewing court gives a final mandate [overturning the conviction] that is not stayed pending an appeal to another court." ***Id.* at 1241; *See also Johnson v. Halloran*, 728 N.E.2d 490, 494 (Ill. App. Ct. 2000) (finding that a legal malpractice cause of action does not accrue until the plaintiff's conviction is overturned)**. When a plaintiff's conviction is overturned by a final appellate mandate, all of the elements of his legal malpractice claim exist, and a plaintiff may then bring suit, as collateral estoppel can no longer be used to preclude him from proving facts establishing his innocence.[3]

In this case, the Illinois Fifth District Court of Appeals issued its final mandate on May 11, 2000, overturning Woidtke's conviction and remanding the case for a new trial if the state chose to pursue Woidtke's prosecution. Thus, Woidtke's legal malpractice claim accrued, if ever, on May 11, 2000. On May 11, 2000, all of the elements of Woidtke's cause of action were present. Woidtke filed his complaint in this Court on March 29, 2002, more than one year after the cause of action accrued. Thus, Woidtke's complaint against Defendants Lopinot, Trentman, and St.

[3]Once a plaintiff's criminal conviction is overturned, he is again presumed innocent until proven guilty beyond a reasonable doubt.

Clair County is time-barred pursuant to **745 ILCS 10/8-101**.

Woidtke argues that the ***Griffin*** court's decision was premised upon the fact that the State elected not to retry Griffin. In ***Griffin***, the Seventh Circuit affirmed the district court's decision finding a conflict of interest and issued a writ stating that Griffin was to be released from custody "'unless the State of Illinois elects to retry [Griffin] within [120] days from the issuance of this [c]ourt's final mandate." ***Id.* at 1237**.[4] The Seventh Circuit issued its final mandate on September 27, 1996. ***Id***. The Illinois Fifth District Court of Appeals held that Griffin's legal malpractice action accrued on September 27, 1996, the date that the Seventh Circuit issued its final mandate. ***Id.* at 1241**.

Contrary to Woidtke's assertions, the court did not condition this holding on the State's choice not to retry Griffin, nor did the court hold that the cause of action would have accrued on a different date had the State elected to retry Griffin. The court simply held that the cause of action accrued on the date the Seventh Circuit issued its final mandate. ***Id***. In Woidtke's case, that date was May 11, 2000. Because Woidtke filed this complaint more than one year after the mandate was issued, Woidtke's complaint is time-barred under **745 ILCS 10/8-101**, and all counts of his complaint alleged against Defendants Lopinot, Trentman, and St. Clair County must be dismissed.

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[4]This language is nearly identical to that of the appellate court's mandate in Woidtke's case. The appellate court stated, "we are compelled to reverse Defendant's conviction and remand for a new trial if the state chooses to pursue the prosecution of Defendant." ***People v. Woidtke*, 729 N.E.2d 506 (Ill. App. Ct. 2000)**.

C. Defendant Public Defender's Office of St. Clair County

Defendant Public Defender's Office of St. Clair County argues that Woidtke's complaint against it should be dismissed because it is not an entity capable of being sued. Under **FEDERAL RULE OF CIVIL PROCEDURE 17(b)**, the capacity of an entity to be sued must be determined by Illinois law. The District Court for the Northern District of Illinois addressed this in ***Clay v. Friedman*, 541 F. Supp. 500 (N.D. Ill. 1982)**. The court found that Illinois law simply "create[s] an office or position to be filled by one person. [It does] not create a governmental entity or agency having an existence separate from the person who fills it." ***Id.* at 503**. Thus, the court concluded that the Public Defender's Office "is not an entity suable under Rule 17(b)." ***Id***. Woidtke does not dispute this.[5] Therefore, the Court finds that Defendant Public Defender's Office of St. Clair County is not an entity capable of being sued, and the Court dismisses all counts alleged against Defendant Public Defender's Office of St. Clair County.

III. Conclusion

The Court finds that all counts of Woidtke's complaint alleged against Defendants Lopinot, Trentman, and St. Clair County are time-barred. Further, Defendant Public Defender's Office of St. Clair County is not an entity capable of being sued. Accordingly, the Court **GRANTS** Defendant Lopinot's motion to dismiss (Doc. 12), Defendants St. Clair County and Public Defender's Office of St. Clair

[5]Nor does Woidtke dispute that Defendant St. Clair County is immune from liability for punitive damages pursuant to **745 ILCS 10/2-102**.

County's motion to dismiss (Doc. 14), and Defendant Trentman's motion to dismiss (Doc. 16). The Court **DISMISSES with prejudice** Woidtke's entire complaint. Because the Court finds the above arguments dispositive, the Court does not address the remaining arguments raised in Defendants' motions to dismiss. The Court further **DENIES as moot** any remaining pending motions in this case.

IT IS SO ORDERED.

Signed this _____ day of _____, 2002.

/s/ David R. Herndon
DAVID R. HERNDON
United States District Judge